STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1745

State of Minnesota,
Respondent,

vs.

Joshua Michael Jacobs,
Appellant.

Filed August 20, 2012
Affirmed
Johnson, Chief Judge

Stearns County District Court
File No. 73-CR-10-1661

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jessie L. Sogge, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent)

J. Matthew Holson, Assistant Stearns County Public Defender, St. Cloud, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

JOHNSON, Chief Judge

A police officer stopped Joshua Michael Jacobs's pick-up truck late one night based on a suspicion that Jacobs's driver's license was suspended. Jacobs was arrested after the officer determined that he was intoxicated. An inventory search of Jacobs's pick-up truck revealed, among other things, a loaded pistol in the center console. Jacobs was convicted of driving with a suspended license, driving while intoxicated, and carrying a firearm in public while under the influence of alcohol. On appeal, he argues that the district court erred by denying his motion to suppress evidence of the pistol and that the evidence is insufficient to prove that he had notice that his driver's license was suspended. We affirm.

FACTS

Officer Jeffrey Eggert was on patrol in the city of Cold Spring in the early morning hours of November 22, 2009. He checked the license plate of a 2000 Chevrolet Silverado pick-up truck shortly after 2:00 a.m. and received information that the registered owner of the vehicle, Jacobs, had a suspended driver's license. Officer Eggert stopped the truck and confirmed that Jacobs's license was suspended. In the process, Officer Eggert suspected that Jacobs was intoxicated. A preliminary breath test indicated an alcohol concentration of .132. Each of the three passengers in the truck also was too intoxicated to drive. Officer Eggert arrested Jacobs and arranged for the truck to be towed because it was blocking the entrance to a construction site.

Officer Jason Blum performed an inventory search of the vehicle before it was towed. He found a loaded pistol and two extra cartridge magazines in the truck's center console. Officer Blum also found an open vodka bottle and some beer cans. Officer Blum confiscated the pistol, magazines, and alcohol containers.

In March 2010, the state charged Jacobs with four misdemeanor offenses: driving after suspension, a violation of Minn. Stat. § 171.24, subd. 1 (2008); open container possession, a violation of Minn. Stat. § 169A.35, subd. 3 (2008); fourth-degree driving while intoxicated (DWI), a violation of Minn. Stat. §§ 169A.20, subd. 1(1), .27 (Supp. 2009); and carrying a firearm while under the influence of alcohol, a violation of Minn. Stat. § 624.7142, subds. 1(4), (6), 6(a), (b) (2008).

In September 2010, Jacobs moved to suppress evidence of the pistol. The district court held an evidentiary hearing on the motion in November 2010. The district court denied the motion in December 2010.

In May 2011, the parties submitted the issue of Jacobs's guilt to the district court for a trial without a jury. The parties stipulated to the admission of the criminal complaint, police reports, the implied consent advisory, a toxicology report by the Minnesota Bureau of Criminal Apprehension, the impound sheet, and a document reflecting Jacobs's driving record. The district court found Jacobs guilty of driving with a suspended license, DWI (based on a blood test indicating an alcohol concentration of .09), and carrying a firearm in public while under the influence of alcohol. But the district court found Jacobs not guilty of the open-container charge because the officers did not test the contents of the vodka bottle.

Jacobs appeals.

D E C I S I O N

I. Motion to Suppress

Jacobs first argues that the district court erred by denying his motion to suppress evidence of the firearm that Officer Blum found during the inventory search of the pick-up truck. Evidence of the firearm supported the district court's finding that Jacobs violated a statute that makes it a crime to "carry a pistol on or about the person's clothes or person in a public place . . . when the person's alcohol concentration is less than 0.10, but more than 0.04." Minn. Stat. § 624.7142, subd. 1(6).

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. Warrantless searches generally are *per se* unreasonable. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). But inventory searches are a well-defined exception to the warrant requirement. *Colorado v. Bertine*, 479 U.S. 367, 371, 107 S. Ct. 738, 741 (1987); *South Dakota v. Opperman*, 428 U.S. 364, 373, 96 S. Ct. 3092, 3099 (1976); *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Accordingly, an inventory search "conducted pursuant to a standard police procedure prior to lawfully impounding an automobile [is] not unconstitutional under the Fourth Amendment." *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977).

Inventory searches are considered reasonable because of their administrative and caretaking functions. *State v. Holmes*, 569 N.W.2d 181, 186 (Minn. 1997). They "serve

to protect an owner's property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger." *Bertine*, 479 U.S. at 372, 107 S. Ct. at 741; *see also Goodrich*, 256 N.W.2d at 510. An inventory search is reasonable under the Fourth Amendment if (1) "police followed standard procedures in conducting the search" and (2) "police conducted the search, at least in part, for the purpose of obtaining inventory." *Holmes*, 569 N.W.2d at 188; *see also Ture*, 632 N.W.2d at 628. The state bears the burden of proving that the inventory-search exception to the warrant requirement applies. *See Ture*, 632 N.W.2d at 627.

We first consider whether Officer Blum followed standard procedures in conducting the inventory search. *See Holmes*, 569 N.W.2d at 188. Jacobs argues that Officer Blum did not do so because he failed to prepare a complete inventory of all items found in the truck. At the suppression hearing, the state introduced the Cold Spring Police Department's motor vehicle towing and impound policy, which includes the following provision concerning inventory searches:

> All officers should complete a vehicle impound inventory sheet as well as an incident report of all items of value inside the any [sic] impounded vehicle.
>
> **Because cash or other valuables can be very small, a search of all open or closed vehicle compartments as well as all open or closed containers shall be searched and inventoried.**

In this case, the vehicle impound sheet completed by Officer Blum lists the following contents of Jacobs's pick-up truck: "Sig SP 2340 # SP0004849 (Taken to PD)," "2 mags," and "Misc Garbage & Paperwork." Jacobs testified that his pick-up truck also

contained coats, boots, compact discs, "a couple pair of pretty expensive sunglasses," his vehicle title, his insurance card, and mail. The inventory sheet did not list any of these items. For that reason, Jacobs contends that Officer Blum did not follow standard procedures.

The state relies on Officer Blum's testimony that he specifically described the pistol and the two extra magazines because he believed them to be of value, unlike the other items, which he did not consider to be of value. Although Officer Blum could have completed the inventory sheet with more thoroughness and precision, he did not fail to abide by the department's policy. Because one of the purposes of an inventory search is "to insure against claims of lost, stolen, or vandalized property," *Bertine*, 479 U.S. at 372, 107 S. Ct. at 741, the relevant question is which items would have value to someone other than Jacobs. Police officers would be overburdened if they were required to inventory every item in a vehicle that could conceivably have value to the owner of the property. Thus, we conclude that Officer Blum followed standard procedures in conducting the inventory search of Jacobs's truck.

We next consider whether Officer Blum conducted the inventory search for the purpose of taking an inventory of the truck's contents. *See Holmes*, 569 N.W.2d at 188. Jacobs contends that the inventory search was pretextual and conducted in bad faith. He relies heavily on *Holmes* to support this contention. In *Holmes*, the district court suppressed evidence of a pistol discovered in a car after a parking monitor ordered the car to be towed for unpaid parking tickets. *Id.* at 182-84. The parking monitor conducted an initial inventory of the car and discovered an empty gun case on the floor behind the

driver's seat. *Id.* at 183. A police officer patted down the driver and discovered a cartridge magazine in his pocket. *Id.* The officer returned to the driver's car and searched it again, this time finding a pistol in the locked glove compartment. *Id.* The supreme court determined that the inventory search was pretextual because the officer's "sole motivation" was to discover evidence of contraband. *Id.* at 188-89. The supreme court reached this conclusion after noting that the search was conducted by an officer responsible for criminal investigations, that the search was conducted after the parking monitor completed her inventory search, that the officer knew that it was the parking monitor's job to conduct the inventory search, that the officer did not ask the parking monitor whether she needed help with the inventory search, and that the officer did not create an inventory sheet or document Holmes's personal effects, other than the pistol. *Id.* at 188-89. Accordingly, the supreme court held that the district court did not err by suppressing evidence of the pistol. *Id.* This case, however, is unlike *Holmes*. There is no evidence that Officer Blum was seeking a firearm or other contraband. *See id.* at 183. In addition, Officer Blum was specifically tasked with taking an inventory of Jacobs's truck. Furthermore, Officer Blum prepared an inventory sheet. Thus, we conclude that Officer Blum searched Jacobs's car, at least in part, for the purpose of taking an inventory.

For these reasons, the district court did not err by denying Jacobs's motion to suppress evidence of the pistol.

II. Sufficiency of Evidence

Jacobs also argues that the evidence introduced at trial is insufficient to prove that he is guilty of driving after suspension. The district court found that Jacobs operated a motor vehicle on November 22, 2009, that required a driver's license, that Jacobs's license was suspended at the time, and that Jacobs "had been given notice of the suspension, or reasonably should have known his license was suspended." Jacobs argues on appeal that the state failed to prove, beyond a reasonable doubt, that he was given notice of his suspension or that he reasonably should have known that his license was suspended.

We begin by considering whether Jacobs's challenge to the sufficiency of the evidence is reviewable on appeal. Jacobs did not order a transcript of the court trial, and he also did not submit a statement of the proceedings under Minn. R. Civ. App. P. 110.03. We cannot review the sufficiency of the evidence if an appellant fails to provide a trial transcript. *State v. Heithecker*, 395 N.W.2d 382, 383 (Minn. App. 1986). In addition, Jacobs's failure to order a transcript of his trial makes it impossible to determine with certainty whether the case was submitted to the district court as a stipulated-evidence trial pursuant to Minn. R. Crim. P. 26.01, subdivision 4, or as a stipulated-facts trial pursuant to Minn. R. Crim. P. 26.01, subdivision 3. The district court's order refers to subdivision 3. But at oral argument, counsel for both parties stated that the trial was conducted pursuant to subdivision 4. If we were to accept the statements of counsel, Jacobs could not obtain appellate review of the sufficiency of the evidence because subdivision 4, by its plain language, allows him to obtain review only of specified pretrial

issues. *See* Minn. R. Crim. P. 26.01, subd. 4(f); *State v. Rasmussen*, 749 N.W.2d 423, 427 (Minn. App. 2008); *see also State v. Busse*, 644 N.W.2d 79, 88-89 (Minn. 2002).

If we were to accept the district court's reference to subdivision 3, we would review Jacobs's sufficiency argument, and we would conclude that it is without merit. A defendant is guilty of the misdemeanor offense of driving after suspension if:

> (1) the person's driver's license or driving privilege has been suspended;
>
> (2) *the person has been given notice of or reasonably should know of the suspension*; and
>
> (3) the person disobeys the order by operating in this state any motor vehicle, the operation of which requires a driver's license, while the person's license or privilege is suspended.

Minn. Stat. § 171.24, subd. 1 (emphasis added). The statute expands on the requirement that the person has been given notice:

> Notice of revocation, suspension, cancellation, or disqualification is sufficient if personally served, or if mailed by first class mail to the person's last known address or to the address listed on the person's driver's license. Notice is also sufficient if the person was informed that revocation, suspension, cancellation, or disqualification would be imposed upon a condition occurring or failing to occur, and where the condition has in fact occurred or failed to occur.

Id., subd. 7(a).

Jacobs's driving record, which was introduced into evidence, states that his driver's license was suspended on November 2, 2009, for failure to appear or pay fines. But the exhibit also bears an entry, dated the following day, stating "order returned." At oral argument, the prosecutor argued that this entry proves that the Department of Public

Safety mailed a notice of suspension to Jacobs's last-known address but that the order was returned by the postal service as undeliverable. Jacobs's counsel did not contest this interpretation. As a matter of law, notice of suspension is sufficient "if mailed by first class mail to the person's last known address or to the address listed on the person's driver's license." *Id.* Accordingly, the evidence supports the district court's factual finding that Jacobs "had been given notice of the suspension, or reasonably should have known his license was suspended."

Thus, we reject Jacobs's argument that the evidence is insufficient to support the district court's finding of guilt.

Affirmed.